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11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 In re
15 Round Table Pizza Inc.,
16 Debtor.

Case Nos. 11-41431 RLE
11-41432 RLE
11-41433 RLE
11-41434 RLE

Chapter 11

17 In re
18 Round Table Development Co.,
19 Debtor.

**MOTION FOR ORDER AUTHORIZING
DEBTORS TO HONOR PRE-PETITION
GIFT CERTIFICATES AND
PROMOTIONS**

21 In re
22 The Round Table Franchise Corp.,
23 Debtor.

Judge: Hon. Roger Efremsky
Date: February 11, 2011
Time: 10:30 a.m.
Place: United States Bankruptcy Court
1300 Clay Street
Oakland, California

24 In re
25 Round Table Pizza Nevada LLC,
26 Debtor.
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28

1 **I. INTRODUCTION**

2 Round Table Pizza Inc., the parent corporation, and two subsidiaries, The Round Table
3 Franchise Corporation, which operates the franchise business, and Round Table Development
4 Company, which operates the company-owned stores; and Round Table Pizza Nevada LLC,
5 which is wholly owned by Round Table Development Company, the joint debtors and debtors-in-
6 possession in the above captioned Chapter 11 reorganization cases (collectively "Round Table" or
7 the "Debtor"), hereby jointly move the Court for an order authorizing Round Table to continue to
8 accept and honor pre-petition customer gift certificates and promotions (the "Customer Practices
9 Motion").

10 This Customer Practices Motion is based on the Memorandum of Points and Authorities
11 set forth herein, the NOTICE OF HEARING ON FIRST DAY MOTIONS (the "Omnibus Notice"), the
12 DECLARATION OF J. ROBERT MCCOURT IN SUPPORT OF FIRST DAY MOTIONS (the "Omnibus
13 Declaration") filed concurrently herewith and incorporated herein by reference, the pleadings and
14 papers on file herein, and upon such oral and documentary evidence as may be presented at the
15 hearing on the Customer Practices Motion. By a separate application, Debtor has requested an
16 order shortening time for notice and setting a hearing on this matter and other "first day" motions
17 on an expedited basis.

18 **II. JURISDICTION**

19 On February 9, 2011 (the "Petition Date"), the Debtors filed their voluntary petitions for
20 relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the
21 United States Bankruptcy Court for the Northern District of California.

22 The Court has jurisdiction over this case and this Motion Pursuant to 28 U.S.C. §§ 157 and
23 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue is proper
24 in this District pursuant to 28 U.S.C. §§ 1408 and 1409(a).

25 The statutory bases for the relief requested herein are sections 105, and 959(b) of the
26 Bankruptcy Code and section 1749.6 of the California Civil Code.

1 **III. FACTS**

2 **A. Background**

3 Round Table's first restaurant opened in Menlo Park, California in 1959. Over the past 50
4 years, Round Table has grown to dominate the Northern California market for pizza, to become a
5 major West Coast chain, with nearly 500 stores in seven States, and to engage in international
6 franchise development.

7
8 During the same period, Round Table diversified from acting exclusively as a franchisor to
9 also operating company-owned stores, ultimately acquiring and developing 140 company-owned
10 stores and swelling its employee base from 70 to a peak of over 3,000 employees.

11 During the decade prior to the Great Recession, Round Table enjoyed tremendous growth.
12 Between 1997 and 2006, revenues grew from \$15 million to \$120 million per year, and operating
13 profits grew from \$4.3 million to \$10.5 million. In February of 2007, Round Table obtained a
14 new credit facility. Although Round Table restructured its business to adjust to the Great
15 Recession, the terms of the credit facility could not be met by that restructured business. Efforts to
16 renegotiate the terms of the credit facility were unsuccessful.

17
18 A fuller presentation of Round Table's background, the circumstances which led to the
19 instant Chapter 11 filing, and Round Table's expectations regarding its reorganization is set forth
20 in the Omnibus Declaration.

21 In connection with Round Table's Employee Stock Option Plan (the "ESOP"), an
22 independent appraiser valued Round Table at \$45 million approximately one year ago. Round
23 Table engaged in marketing efforts immediately prior to the Petition Date, which confirmed a
24 value in that range. General Electric Capital Corporation ("GECC") / Prudential Insurance of
25 America ("Prudential") are owed \$30 million in the aggregate, suggesting that Round Table should
26 generate a significant recovery to creditors, and potentially a recovery to the ESOP which holds its
27 equity as well.
28

1 **B. Intended Reorganization**

2 There are two core aspects to Round Table's business: acting as a franchisor to
3 independent third party owner-operators, and operating company-owned stores.

4 There are currently 355 franchised stores, with 148 franchisees. The franchise base is
5 highly diversified: 91% of the franchisees own five stores or less, and only two franchisees own
6 20 to 25 stores. Management believes that the franchise segment of Round Table's business is
7 sound, produces stable profits and does not require material reorganization.

8 Round Table operates 128 company-owned stores. Although most of them are profitable,
9 a number of the stores have been unable to operate profitably in the current economic
10 environment, generating significant losses. Over the first four to six months of its Chapter 11
11 case, Round Table intends to close unprofitable stores and to renegotiate leases with respect to its
12 marginal stores. Within four to six months, Round Table expects that its remaining base of
13 company-owned stores will be stable and profitable.

14 Round Table expects to have maximized the value of the chain, through store closings and
15 lease renegotiations, by the conclusion of the initial phase of its reorganization, after which it
16 intends to complete its reorganization by embarking on one of two paths.

17 If it appears that an appropriate value can be realized for the benefit of all of its
18 constituencies through a sale, Round Table is amenable to engaging in that process.

19 On the other hand, if problems in the economy and the credit industry make it impossible
20 to realize an appropriate value for the company this year, Round Table will propose a Plan of
21 Reorganization which restructures its debt so that it can operate successfully for a period of
22 perhaps five years, by the conclusion of which it would expect to sell the business or refinance the
23 debt.

24 For either reorganization to succeed, the loyalty and support of Round Table's customers
25 will be essential.

26 **C. Customer Promotions and Gift Cards**

27 Round Table, like most retail food chains, routinely publishes various coupons and
28 promotional offers as part of its marketing efforts. Round Table also has a gift certificate program

1 whereby customers can purchase gift certificates that can be redeemed at any Round Table
2 location.

3 Promotional offers are an important component of Round Table's marketing. Further,
4 Round Table believes that not honoring its pre-petition promotions and coupons could
5 significantly damage customer goodwill. Customers who have purchased or received gift
6 certificates quite simply expect to be able to redeem them at any time at any Round Table.
7 Maintaining the goodwill of these customers is necessary for a successful reorganization.

8 **IV. RELIEF REQUESTED**

9 By this Motion, Round Table requests that the Court authorize it to continue to honor, in
10 the ordinary course of business, all promotional offers, coupons, and gift certificates issued pre-
11 petition.

12 **V. AUTHORITY FOR RELIEF**

13 It is important that Round Table continue to honor all gift certificates and promotions. As
14 with any retail business, especially in an extremely competitive sector, customer goodwill and
15 loyalty are critical to Round Table. A successful reorganization requires that Round Table
16 maintain customer goodwill. Continuing to honor gift certificates and other promotions will help
17 maintain Round Table's goodwill with its customers. On the other hand, it would be extremely
18 detrimental to that goodwill to dishonor either promotional offers or gift cards.

19 Under applicable non-bankruptcy law, the funds represented by gift certificates are not
20 property of the estate. Section 1749.6 of the California Civil Code provides that:

21 (a) A gift certificate constitutes value held in trust by the issuer of
22 the gift certificate on behalf of the beneficiary of the gift certificate.
23 The value represented by the gift certificate belongs to the
beneficiary, or to the legal representative of the beneficiary to the
extent provided by law, and not to the issuer.

24 (b) An issuer of a gift certificate who is in bankruptcy shall continue
25 to honor a gift certificate issued prior to the date of the bankruptcy
26 filing on the grounds that the value of the gift certificate constitutes
trust property of the beneficiary.

27 Cal. Civ. Code § 1749.6.

28 Thus, under California law the value represented by a gift certificate is not property of the

1 estate, but rather is held in trust for the certificate holder as beneficiary. See id. The Bankruptcy
2 Code is clear that property which the debtor holds only legal title to, but not an equitable interest
3 in, is not property of the estate. 11 U.S.C. § 541(d). Further, the Code requires that the debtor
4 comply with all applicable non-bankruptcy law. See 11 U.S.C. § 959(b). Although there is no
5 case law directly on point, this should include the directive of Civil Code section 1749.6 to
6 continue to honor gift certificates.

7 In addition, even if gift certificates were not considered value held in trust pursuant to
8 Civil Code section 1749.6, they would be entitled to priority under section 507(a)(7), as deposits
9 for personal, family, or household use. See In re WW Warehouse, Inc., 313 B.R. 588 (Bankr. D.
10 Del. 2004); see also Salazar v. McDonald (In re Salazar), 430 F.3d 992, 996 (9th Cir. 2005) (citing
11 In re WW Warehouse favorably). Consequently, honoring a gift certificate at most would be an
12 alteration in timing, rather than amount, of payment. Such an alteration of timing is of minimal
13 significance to other creditors in comparison with the need to maintain customer goodwill.

14 In addition to the above, relief is justified under section 105 on the basis that any small
15 benefit gained by delaying honoring gift certificates is far outweighed by the value to the estate of
16 maintaining customer goodwill. Gift certificate holders will ultimately have to be paid, pursuant
17 to section 507(a)(7) or Civil Code section 1749.6. Authorization to honor pre-petition
18 promotional offers and coupons is similarly justified under section 105. It is unlikely that any
19 benefit would be gained by not honoring them, as the business they were intended to generate
20 would most likely simply be lost. On the other hand, the loss of goodwill resulting from
21 temporarily dishonoring gift certificates and promotions would be detrimental to the going
22 concern value of the business.

23 As discussed above, Round Table should be authorized to continue its customer practices
24 pursuant to sections 105, 507(a)(7), and 959(b) of the Bankruptcy Code and section 1749.6 of the
25 California Civil Code.

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1 **VI. CONCLUSION**

2 **WHEREFORE**, Round Table respectfully requests that Court enter an Order:

- 3 1. Authorizing Round Table to continue to honor, in the ordinary course of business,
4 all promotional offers and coupons issued pre-petition.
5 2. Authorizing Round Table to continue to honor gift certificates issued pre-petition.
6 3. For such other relief as the Court finds just and proper.

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9 DATED: February 9, 2011

McNUTT LAW GROUP LLP

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11 By: /s/ Scott H. McNutt
12 Scott H. McNutt
13 Proposed Attorneys for Debtors
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